

**NOV 26 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

PEDRO ANTONIO MONTES VELOZ;  
ESTELA MARIA HERNANDEZ DE  
MONTES,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

Nos. 05-74050

06-70451

06-73876

Agency Nos. A75-304-148

A75-304-149

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted November 13, 2007\*\*

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

In these consolidated cases, Pedro Antonio Montes Veloz and Estela Maria Hernandez de Montes, natives and citizens of Mexico, petition for review of three

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Board of Immigration Appeals (“BIA”) orders: one denying their first motion to reopen underlying cancellation of removal proceedings based on *Lanza v. Ashcroft*, 389 F.3d 917, 926 (9th Cir. 2004) (No. 05-74050); one denying their second motion to reopen based on exceptional circumstances (No. 06-70451); and one denying their motion to reconsider the denial of their second motion to reopen (No. 06-73876). To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider and a motion to reopen. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005). We dismiss the petition for review in 05-74050, and deny the petitions for review in 06-70451 and 06-73876.

We lack jurisdiction over the BIA’s denial of petitioners’ first motion to reopen because petitioners fail to state a colorable due process claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) (“Although we retain jurisdiction to review due process challenges, a petitioner must allege at least a colorable constitutional violation.”); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848-49 (9th Cir. 2003).

Petitioners have waived any right to challenge the BIA’s denial of their second motion to reopen. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60

(9th Cir. 1996) (holding issues which are not specifically raised and argued in a party's opening brief are waived).

The BIA did not abuse its discretion when it denied petitioners' motion to reconsider because petitioners failed to identify any error of fact or law in the BIA's decision denying their second motion to reopen. *See* 8 C.F.R.

§ 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc); *see also Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002) (noting that "the decision of the BIA whether to invoke its *sua sponte* authority is committed to its unfettered discretion") (italics and internal citations omitted).

Petitioners did not file a petition for review of the BIA's August 30, 2004 order reducing their voluntary departure period. Their reliance on *Padilla-Padilla v. Gonzales*, 463 F.3d 972 (9th Cir. 2006) is therefore misplaced.

**No. 05-74050: PETITION FOR REVIEW DISMISSED.**

**Nos. 06-70451 & 06-73876: PETITIONS FOR REVIEW DENIED.**